The
ORPORATION JOURNAL

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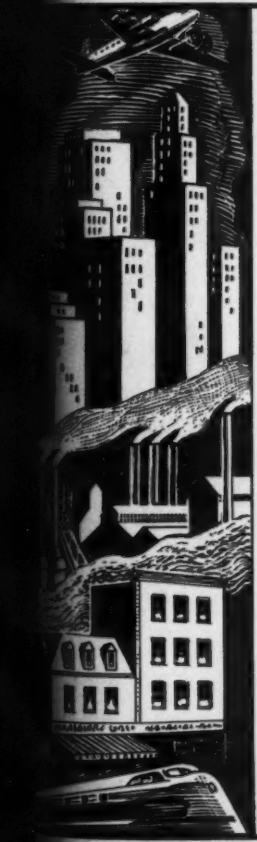

Withdrawal Before or After January 1

In a number of states, the completion of the contemplated withdrawal of a corporation before January 1 may make unnecessary the filing of certain reports and the payment of certain fees . . . . . Page 203

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Highest Massachusetts court reverses its decree in the Janes v. Washburn Co. case and grants relief to preferred stockholder objecting to recapitalization plan which provided for exchange of stock and elimination of accrued unpaid dividends on preferred stock . Page 206

ished by The Corporation Trust Company and Associated Companies

HOW TO CHOOSE A TRANSFER AGENT... PART 1

CHECK FOR RESPONSIBILITY

BECAUSE

A CORPORATION'S STOCK RECORDS are the evidence of the ownership of its shares, of the right to vote them, to receive dividends on them, and share in the assets upon liquidation. Who keeps them, then, and how well they are kept, should be a matter of the gravest concern to the company's officers and directors. The company is liable for any loss *a preventable error* in them may cause the rightful owner.

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NOVEMBER 1950

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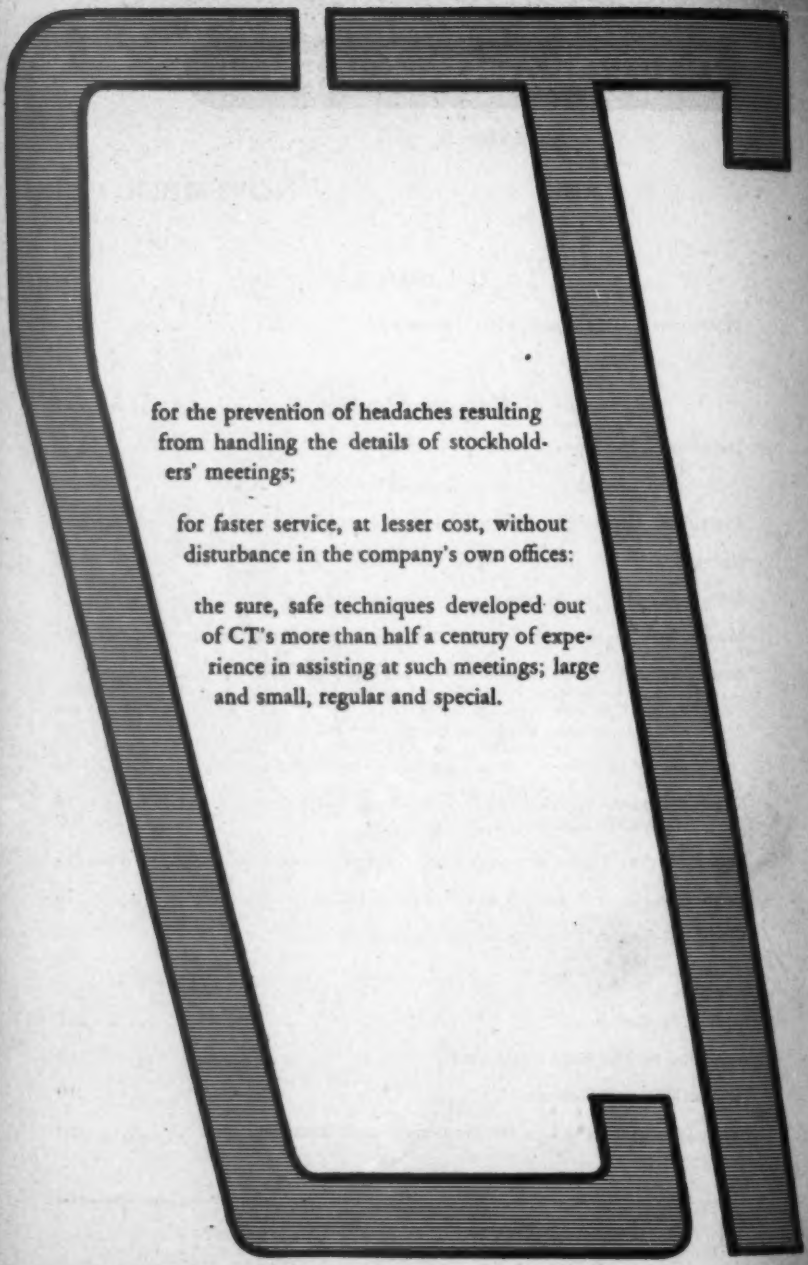
Recent Decisions


for the prevention of headaches resulting from handling the details of stockholders' meetings;
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the sure, safe techniques developed out of CT's more than half a century of experience in assisting at such meetings; large and small, regular and special.

a decisive date

Withdrawal Before and After Jauuary 1

WHERE withdrawal from one or more states by a licensed foreign corporation is being contemplated toward the close of a year, counsel has found that if formal withdrawal is consummated and business is discontinued before January 1, this will, in many states result in eliminating liability for the filing of additional tax returns and the payment of taxes which will otherwise become due if formal withdrawal is delayed until shortly after January 1.

Income Taxes.—For instance, take the situation of a corporation, licensed in all states, which has been filing income tax reports on a calendar year basis. If it withdraws from and ceases business in one or more of the 32 jurisdictions which impose corporate income taxes, it would be relieved of the necessity of giving consideration to the preparation of *additional* income tax returns for *a short period*—from that January 1 to the date of ceasing business and withdrawing in the new year —which would become due if the company were to remain within the state or states beyond January 1. These 32 jurisdictions are Alabama, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, Wisconsin.

Franchise Taxes.—In several states, if formal withdrawal is not effected prior to January 1, it has been found that liability for the franchise tax will attach on that date for the year in which that January 1 falls. These states are Georgia, New Jersey, New Mexico, Ohio and Pennsylvania. There may be added to these states, California, Connecticut, the District of Columbia, Minnesota, New York, Utah and Vermont, previously mentioned, where franchise taxes are based on net income.

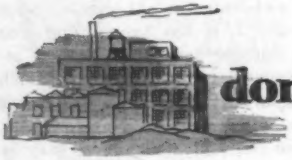
Property Tax Asessments.—Property is assessed as of January 1 in 21 states for ad valorem tax purposes. The disposition of property prior to January 1, owned and located in these states, has been found to eliminate liability for taxes on property which would otherwise be required to be reported and taxed as of that January 1. The 20 states are Arkansas, Florida, Georgia, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Texas, Utah, Virginia, Washington and West Virginia.

Sales Tax License Renewals.—In Alabama, Colorado and Utah, licenses issued in connection with sales tax requirements are renewable on or before January 1. A complete halt in selling operations prior to January 1, where

withdrawal from one of these states is being considered, would serve to make unnecessary a renewal of the sales tax license related to the year to come.

Chain Store License Renewals.—A renewal of chain store licenses is required in eight states on or before January 1. These are Colorado, Georgia, Idaho, Indiana, Montana, South Dakota, Texas and West Virginia. The closing of all stores in one or more of these states before the end of the year would have the effect of making unnecessary the securing of licenses for such stores for the following year.

Occupation License Tax Renewals.—January 1 is the date in five Southern states on which a renewal is required of numerous occupation licenses, exacted for the privilege of engaging in a particular type of business. These states are Georgia, Louisiana, Tennessee, Texas and Virginia. Where, before January 1, a taxable occupation is discontinued in one of these states, a renewal of that license for the coming year is eliminated.



domestic corporations

DELAWARE

Holders of "certificates of contingent obligation," issued to them as bondholders of prior bankrupt whose assets were purchased by corporation in exchange for bonds, treated, under ruling of court, as if they were stockholders of issuing corporation.

A dissolved Delaware corporation had in about 1917 issued instruments entitled "Certificate of Contingent Obligation." These were given to the bondholders of a prior bankrupt, whose assets were purchased and thereafter assigned to the corporation, in consideration for the assignment of the bondholders' claims to the company and were given in the face amount of the bonds for which they were exchanged. The bondholders also subscribed to certain notes. The receiver for the dissolved corporation requested instructions of the Court of Chancery, New Castle County, as to whether the so-called Certificates of Contingent Obligation created a creditor-debtor or stockholder relationship. The difference was noted by the court as important because there was insufficient money to pay the certificate holders in full.

The court, after an examination of the circumstances surrounding the issuance of the Certificates, concluded that the holders "should be treated as though they were stockholders," and that the receiver should, in fixing distribution rights, recognize all outstanding certificates.

Moore v. American Finance & Securities Co., 73 A. 2d 47. Howard L. Williams of Hering, Morris, James & Hitchens of Wilmington, for certain certificate holders. Herbert B. Warburton of Wilmington, per se.

State Supreme Court construes appraisal statute.

The Supreme Court of Delaware, in construing the application of the appraisal statute, Section 61, General Corporation Law, and reversing an order of the Court of Chancery reported at 66 A. 2d 910, ruled, in connection with the merger of a Delaware company into a Maryland corporation, that a stockholder of the Delaware company was entitled to the intrinsic or true value of his stock, taking all the elements of value into consideration, such as the nature of the enterprise, net asset value, market value, management, earnings and dividends, expenses of operation, and the tax situation. The court concluded that the appraiser correctly fixed the true value of the common stock of a regulated closed-end investment company with leverage by taking various factors of value into consideration, applying the applicable discount rate and adding the amount arising from the favorable tax situation.

Tri-Continental Corporation v. Battye et al., 74 A. 2d 71. William Prickett of Wilmington, and Wm. Dwight Whitney of Cravath, Swaine & Moore of New York City, for appellants. Charles F. Richards of Richards, Layton & Finger of Wilmington, and George Rosier and Zelig R. Nathanson of Austrian & Lance of New York City, for appellees.

Appraisal of stock of stockholders dissenting to merger, determined by giving weighted values to net assets, and market values and capitalizing earnings and dividends, upheld.

The Court of Chancery, New Castle County, rendered its decision on exceptions to an appraiser's report, under section 61, Delaware Corporation Law, involving preferred and common stock of stockholders who chose not to accept the terms of a merger. The court reviewed the methods applied by the appraiser. These included weighting the net asset value at 40% for the preferred stock and 20% for the common, and weighting the market value of the preferred stock at 30% and the common at 45%, and capitalizing the earnings and dividends by taking the average earnings for the preferred and common for a five-year period and multiplying these yearly earnings by a factor of 5, but not including arrearages under this element as they had been taken into account under net asset value. The earnings and dividends were weighted at 30% on the preferred and 35% on the common.

The court, after examining the particular circumstances under which the methods employed were applied, found no reason to disturb the values reached, to which exception had been taken.

Jacques Coe & Co. et al. v. Minneapolis-Moline Company, 75 A. 2d 244. Robert C. Barab, of Wilmington, for petitioners and for stockholders—exceptants. Robert H. Richards, Jr., of Richards, Layton & Finger, of Wilmington, for defendant. Commerce Clearing House Court Decisions Requisition No. 437438.

MASSACHUSETTS

Highest state court reverses its decree in the *Janes v. Washburn Co.* case and grants relief to preferred stockholder objecting to recapitalization plan which provided for exchange of stock and elimination of accrued unpaid dividends on preferred stock.

In *Janes v. Washburn Co.*, 91 N. E. 2d 920, (The Corporation Journal, October, 1950, page 185) the Supreme Judicial Court upheld a recapitalization plan providing, upon the exchange of preferred stock, for the elimination of accrued unpaid dividends on the preferred stock.

On September 28, 1950, the Supreme Judicial Court reversed its judgment denying the plaintiff relief and remanded the case to the Superior Court for further proceedings not inconsistent with an opinion rendered on that date, in which the court concluded: "The plaintiff was entitled to cumulative quarterly dividends on her preferred stock at the rate of seven per cent a year, and such unpaid dividends amounted at the date of the filing of the bill to $70 a share. No dividends on other stock could lawfully be declared until the dividends on the preferred stock were paid, yet a dividend on other stock was paid in January, 1945. Four quarterly preferred stock dividends being in arrears, the preferred stock only had the right to vote. Possibly the practical way for the defendant to get rid of the preferred stock of the plaintiff would be to call the preferred stock still outstanding at $110 a share plus all accumulated dividends. We have no means of knowing whether the defendant will take that course. It seems impractical for us at this time to do more than to reverse the final decree, and remand the case to the Superior Court for further proceedings not inconsistent with this opinion."

Janes v. Washburn Company, Supreme Judicial Court of Massachusetts, September 28, 1950. James A. Crotty of Worcester, for plaintiff. M. S. June of Worcester (C. B. Barnes, Jr., of Boston, with him) for defendants.

NEW YORK

Statutory period within which application for appraisal is to be made ruled to run from time stockholders took action in approving plan.

Petitioners, minority stockholders, sought the appointment of appraisers to appraise the value of 55 shares of 7% cumulative preferred stock of $100 par value, out of 5,999 shares outstanding, under Sections 20 and 21, Stock Corporation Law. The New York Supreme Court, Special Term, Queens County, Part I, ruling against petitioners, who had been dilatory in giving notice objecting to a proposed plan of recapitalization, in interpreting the application of these sections, held that the sixty days provided by statute, within which the application for the appointment of appraisers was to be made, began to run from the time the stockholders took action in approving the plan. The court refused to rule that, inasmuch as the plan required the board of directors to approve the plan before it could be consummated, the sixty days began to run from the date of their approval, remarking: "Section 21 of

the Stock Corporation Law expressly constitutes the action taken by the *stockholders* of a corporation as the determinative event which gives rise to the right of a stockholder, who has previously objected and demanded payment for stock, to make an application of this character within sixty days after such objection and demand."

Application of Isaac et al., 97 N. Y. S. 2d 634. Henry W. Pollock of New York City, Henry W. Pollock and Isaac M. Levinson of New York City, of counsel, for petitioners. Birrell & Birrell and Theodore E. Larson of New York City, of counsel, for respondent.

Vesting of control and management of corporation in two of its three directors acting "in conformity with policies of Board of Directors," upheld.

Plaintiff stockholders sought to have declared illegal a stockholders' agreement, signed by all stockholders except one. Their fundamental contention was that the agreement sterilized the board of directors. It brought about a complete redistribution of the common stock, which had the effect of placing the ownership in the hands of the management. Complete control over management was given by conveying to two of the three directors a majority of the common stock. The by-laws vested the two directors "with full executive authority and duties to operate the Corporation in conformity with the policies of the Board of Directors," the joint and unanimous decisions of the two directors being required in order to make their action and decision effective.

The New York Supreme Court, Special Term, New York County, Part V, observed that the simple grant of executive power did not "effect a sterilization of the Board for that power is expressly to be exercised in conformity with the policies of the Board." The court found that a grant of exclusive power to two of three directors to conduct the principal business of the corporation resulted in the by-law providing that the principal business could not be furthered unless the necessary transactions were approved by a majority of the board. "This required approval," observed the court, "constitutes legally sufficient control by the Board for it has long been recognized in New York that the directors of a close corporation, when few in number, and in frequent contact with each other may act effectively without going through the useless formality of convening as a board."

Simonson et al. v. Helburn et al., 97 N. Y. S. 2d 406. Wise & Ottenberg of New York City (Irving S. Ottenberg, J. George Levy of New York City, and T. Girard Wharton of Somerville, N. J., of counsel), for plaintiffs. Kaye, Scholer, Fierman & Hays (Benjamin M. Kaye and Milton Kunen, of counsel), of New York City, for defendant Helburn. Davis, Polk, Wardwell, Sunderland & Kiendl (Theodore Kiendl, of counsel) of New York City, for defendant Langner. Fitelson & Mayers, (Bertram A. Mayers, H. W. Fitelson and Harold J. Sherman, of counsel) of New York City, for defendant Theatre Guild, Inc. Riegelman, Strasser, Schwarz & Spiegelberg (George A. Spiegelberg and Walter J. Freid, of counsel), of New York City, for defendant Wertheim. Paul Weiss, Wharton & Garrison (Samuel J. Silverman, of counsel), of New York City, for defendant Munsell.

* The full text of this opinion is printed in the CCH **New York Corporation Law Reporter**, page 9475.

Election of excessive number of directors ruled void.

The by-laws of the corporation provided that the corporation should be managed by a board of three directors. Four directors were elected at a meeting of the stockholders, and officers were chosen. Two were not present and allege they were nominated and elected directors without their knowledge or consent. The New York Supreme Court, Special Term, New York County, Part I, concluded that, since an election of an excessive number of directors is irregular and voidable and will be set aside upon complaint of a stockholder duly made, granted the application of petitioner stockholder for an order to set aside the election of directors and officers mentioned, and adjudged the election to be irregular, illegal and void. It was set aside and a new election ordered. A second meeting of stockholders which had been called by one of the stockholders, and not by the board of directors, at the instance of stockholders, as provided by statute, was also held illegal and void.

In re Multifade Corporation of America, 97 N. Y. S. 2d 609. Scherl, Kuh and Berley of New York City, for petitioners. Rosett & Weinstein of New York City, for respondents.

Mere service of a notice to arbitrate ruled not an action prohibited by Section 218, G. C. L.

A question raised in a recent case before the New York Supreme Court, Special Term, New York County, Part I, was whether the mere service of a notice to arbitrate, effected by an unlicensed foreign corporation, was the institution of an "action," as that term is used in Section 218 of the General Corporation Law. That section contains a provision, that "A foreign corporation, other than a moneyed corporation, doing business in this state shall not maintain any action in this state upon any contract made by it in this state, unless before the making of such contract it shall have obtained a certificate of authority." The court held that, for the purposes of this section, service of a notice to arbitrate was not the institution of an "action."

Avalon Fabrics, Inc. v. Raymill Fabric Corporation, 96 N. Y. S. 2d 50. Hahn & Golin of New York City, for petitioner. Frederick E. M. Ballon of New York City, for respondent.

NORTH CAROLINA

Stockholder seeking by mandamus proceeding to compel declaration of dividend, ruled required to show presence of surplus profits at time proceeding is instituted.

Plaintiff preferred stockholder in defendant North Carolina corporation sought, by mandamus proceeding, to enforce declaration and payment of a dividend. The Supreme Court of North Carolina stated the primary question was as follows: "Where a stockholder applies for a writ of mandamus to compel the directors of a corporation to declare and pay a dividend, must he allege in his complaint that the corporation has a surplus or net profits

available for the payment of such dividend at the time when the action is brought and the application for the writ is made?" The court referred to the pertinent statutes and said: "These statutes establish these propositions: (1) That where the accumulated profits of a corporation have been ascertained in conformity with G. S. Sec. 55-115, a legal duty devolves upon the directors to declare a dividend among the stockholders of the whole of the accumulated profits and to pay the same to the stockholders on demand, *Amick v. Coble*, 222 N. C. 484, 491, 23 S. E. 2d 854; *Cannon v. Wiscassett Mills Co.*, 195 N. C. 119, 141 S. E. 344; and (2) that neither the capital stock of a corporation, paid in and outstanding, nor its working capital, as fixed pursuant to the provisions of G. S. Sec. 55-115, may be impaired by the payment of a dividend under any circumstances. *Cannon v. Wiscassett Mills Co.*, supra."

After a discussion of the nature of the writ of mandamus, the court concluded that it was necessary for the plaintiff, desiring to use this writ, to compel the defendant to perform an alleged duty, to allege in his complaint all the facts necessary to show that the plaintiff had a clear legal right to the performance of the particular duty at the hands of the defendant at the time when the action is begun and the application for the writ is made. In this case, while the complaint specifically stated that the corporation had accumulated profits on January 1, 1949, it did not contain any statement that there were such profits from which dividends could be declared nine months later, when a demand was made of the directors and, upon refusal, suit was begun. The court said that the presence of a surplus on a particular occasion was not inconsistent with its absence nine months later and felt that such an available surplus could not be inferred from the statement that a surplus existed nine months earlier. The court, therefore, ruled in favor of the corporation.

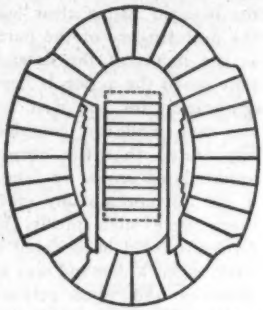
Steele v. Locke Cotton Mills Co. et al., 58 S. E. 2d 620. Hartsell & Hartsell of Concord, for defendants—appellants. Carroll & Steele of Rockingham, for plaintiff-appellee.

foreign corporations

DISTRICT OF COLUMBIA

Indebtedness of Delaware company, found to be doing business through directing its business and maintaining its records in District, owed to defendant foreign corporation, ruled subject to garnishment process.

Plaintiffs brought suit in the Federal District Court for the District of Columbia against defendant foreign corporation by seeking to attach and garnish certain of the latter's assets in the District. These assets consisted of an indebtedness of a Delaware corporation, active in the District of Columbia, arising out of a contract, entered into in the District between defendant and



ROSE BOWL
90,000 Capacity

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No, you couldn't. Not i
corporations which have
Protection arrived first,
four great stadiums sho
two other American sta

Yes, the C T System i

Continuous statutory representation for the client. The hand
of each process served just the way the attorney has directed it to
handled. Complete information about every state tax and e
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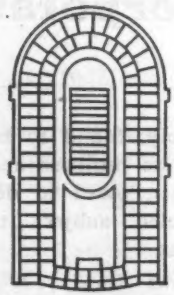
time action on it should be started. The State Tax Reporter
complete, up-to-the-minute, loose-leaf compilation of state l



SOLDIER FIELD
102,000 Capacity

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Albany 6 . . . 4 S. Hawk
Atlanta 3 . . . . Healy
Baltimore 2 . . . 10 Light
Boston 9 . . 10 Post Office
Buffalo 3 . Ellicott Square
Chicago 4 . 208 S. La Salle
Cincinnati 2 . . . Carew
Cleveland 14 . Union Commerce
Dallas 1 . Republic Bank
Detroit 26 . . . . Dime
Dover, Del. . . 30 Dover
Houston . . . Sterling

the Delaware company under which defendant was to construct certain buildings in Virginia.

The United States Court of Appeals for the District of Columbia regarded the question before it as whether the Delaware corporation was transacting business in the District so as to be amenable to the jurisdiction by being served with the process in the garnishee proceeding. The court held the service was proper, under circumstances which indicated that the Delaware company held directors' meetings in the District, had a bank account there, entered into the construction contract and related contracts there, and kept its books, records and correspondence at an office of another corporation, that of the renting agent of its Virginia property, in the District in charge of the Secretary of the Delaware company.

*Goldberg et al. v. Southern Builders, Inc.** United States Court of Appeals for the District of Columbia, July 10, 1950. Herman Tocker of Washington, D. C., for appellants. Thomas S. Jackson, with whom Louis M. Denit, A. Leckie Cox and Pleasant Baxter Davis were on the brief, for appellees. Commerce Clearing House Court Decisions Requisition No. 436691.

* The full text of this opinion is printed in the **District of Columbia Tax Reporter**, page 313.

MARYLAND

Foreign railroad corporation, maintaining office in state for solicitation of freight business over its lines in other states, ruled not doing business for purpose of service of process.

This was a suit for personal injuries plaintiff sustained in a allegedly unsafe boxcar owned by one of the defendants, a foreign railroad corporation which sought to quash service of process upon it, while the box car was on the lines of the other defendant railroad company. The first mentioned corporation, having no tracks in Maryland, had maintained an office in the state for many years for the solicitation of freight business over its lines in other states.

The Circuit Court for Baltimore County granted the motion to quash the service of process. In doing so, it considered the possible application of Sec. 119(a), Article 23, Annotated Code, subjecting "every foreign corporation doing intrastate or interstate or foreign business in this state" to suit, but determined that the moving defendant was not so engaged in business under the decisions of the Court of Appeals of Maryland. The court then considered the effect of Sec. 119(d), subjecting every foreign corporation to suit "on any cause of action arising out of a contract made within this state or liability incurred for acts done within this state, whether or not such foreign corporation is doing business in this state." "Granting the constitutionality of the section, "concluded the court after consideration of the section and the facts, "no facts are alleged in this declaration to bring it within its purview."

*Strong v. Patapsco & Back Rivers Railroad Company et al.,** Circuit Court for Baltimore County, May 10, 1950. Paul Berman, Michael Paul Smith and Sigmund Levin, for plaintiff. Benjamin C. Howard and James J. Lindsay for New York Central Railroad; John Grason Turnbull and Rignal W. Baldwin for Patapsco & Back Rivers Railroad. Commerce Clearing House Court Decisions Requisition No. 438312.

NEW YORK

Service of process upheld where made upon agent of corporation in charge of its local office.

Defendant Ohio corporation moved to quash service of process upon it in a copyright infringement suit under Section 1400(a), Title 28, U. S. C., providing for the institution of suit in the Federal district "in which the defendant or his agent resides or may be found." Service was effected by serving an agent at an address in New York City where he maintained an office, on the door of which defendant corporation's name appeared prominently. This agent solicited orders for the defendant and alleged that he also solicited orders for two other out-of-state corporations, whose names were not displayed. Defendant's name was listed in the building directory and also listed in the telephone directory with the same telephone number as that of the agent. Defendant's letterhead listed that office as its New York showroom. In addition to commissions paid the agent, he was also credited with $45 a month by the corporate defendant toward the payment of his rent.

These factors were found "more than sufficient" to establish that the person served was an agent of the defendant and the United States District Court, Southern District of New York, concluded that the corporation was "found" within the district for the purpose of the suit under the statute mentioned and denied the motion to quash the service of process and to dismiss the suit.

*Alexander Backer Co. v. Gonder Ceramic Arts, Inc. et al,** United States District Court, Southern District of New York, May 29, 1950. Munn, Liddy & Glaccum of New York City, for plaintiff. Margaret W. Smith and Howson & Howson of New York City, for defendant corporation.

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* The full text of this opinion is printed in the **State Tax Reporter,** New York, page 12,247.

Foreign railroad corporation, soliciting freight and passenger business for its lines in other states, ruled not doing business so as to be subject to service of process in New York.

Defendant unqualified foreign railroad corporation moved to set aside service of summons upon it in a suit based upon negligence resulting from injuries allegedly sustained by the plaintiff while alighting from a railroad train operated in Illinois. Defendant's principal business operations were carried on in Alabama where its main office was located. It had no trackage in New York. It maintained an office in New York City for the solicitation of freight and passenger business, in charge of a district freight traffic manager and five assistants, who had no authority to adjust claims with shippers or passengers. The corporation's name was listed in the telephone and building directories. Freight solicited was transported by other carriers to defendant's lines in other states. While passenger business was solicited and reservations made, no tickets were sold in New York and passengers paid direct to the initial carrier.

The New York Supreme Court, Special Term, Kings County, Part I, in granting the motion to set aside the service and dismiss the action, concluded that the facts were not sufficient to warrant a holding that the defendant was engaged in such activities as to constitute doing business in New York and to render it amenable to the service of process under the decided cases. It felt that the fact that defendant's New York representative made inquiry into the nature and extent of the plaintiff's claim following her injury "surely cannot be classified as the 'doing of business' within the state."

Cohen et al. v. Gulf, Mobile & Ohio R. Co.,* 95 N. Y. S. 2d 633. Henry J. Krissoff of Brooklyn, for plaintiffs. Beekman & Bogue of New York City, for defendant.

* The full text of this opinion is printed in the CCH **New York Corporation Law Reporter**, page 9434.

NORTH CAROLINA

Service upon Secretary of State as agent, under statute, for unlicensed foreign corporation, set aside, where company sold at wholesale to local dealer representatives, shipping goods from another state.

Defendant unlicensed foreign corporation, having appointed no agent in North Carolina upon whom service of process could be obtained, was served through service upon the Secretary of State under G. S. Sec. 55-38. Defendant made a special appearance and moved to dismiss the action for want of service. The company was engaged in California in the manufacture for sale in wholesale lots of tubes for use in radio transmission and had designated six dealer representatives in various cities in North Carolina as exclusive outlets for the sale of the tubes in that state, who also sold the products of other manufacturers. A guarantee was enclosed with each tube and plaintiff sued to enforce such a guarantee against the defendant. The latter employed traveling representatives who aided the dealers in facilitating their sales of the tubes. Defendant also employed an agent to investigate complaints regarding its tubes. Ordinarily, tubes were shipped to the dealer representatives but were sometimes shipped to the latters' customers. The company also employed agents to facilitate the collection of slow accounts owed by the local dealer representatives.

The Supreme Court of North Carolina reversed a judgment sustaining the service of summons as valid, observing: "Mere incidental services not substantially of the character of the business carried on by the defendant is not of the nature to subject it to the control and regulation of the state law or to invoke state law for its protection or to bring it within the pale of the statute which makes 'doing business' in this state essential to its application."

Radio Station WMFR, Inc. v. Eitel-McCullough, Inc.,* 59 S. E. 2d 779. Harriss H. Jarrell, High Point, for plaintiff, appellee. B. L. Herman and E. F. Upchurch, Jr. of High Point, for defendant, appellee.

* The full text of this opinion is printed in the **State Tax Reporter**, North Carolina, page 313.

PENNSYLVANIA

Inspection of books and records permitted by stockholder of qualified foreign corporation having its principal office in state.

Plaintiff stockholder in defendant West Virginia corporation, registered to do business and having its principal office in Pennsylvania, where its books and records were kept, sought by a mandamus proceeding to compel the corporation and its officers to allow him to inspect the books and records to learn the names and addresses of the company's stockholders. The court below found that plaintiff's motive was a desire to form a protective committee of preferred stockholders to act in the interest of his investment.

The Supreme Court of Pennsylvania affirmed a judgment awarding the plaintiff a preemptory writ. While noting that it was well settled in the state that a court will not take jurisdiction for the purpose of regulating or interfering with the internal management or affairs of a foreign corporation, the state's highest court observed: "There is no arbitrary line of demarcation, however, between what does and what does not constitute the character of internal affairs where with a local court will not interfere in the case of a foreign corporation. The general rule is that the granting of a right to inspect a foreign corporation's books and records, which are within the jurisdiction, does not so offend." After an examination of the pertinent statutes and decisions, the court concluded that there was imposed upon the corporation a duty to permit the shareholder to exercise his right of inspection under the circumstances.

Kahn v. American Cone & Pretzel Co. et al., 74 A. 2d 160. Morton P. Rome, Thomas F. Devine, Sundheim, Folz, Kamsler & Goodis, M. Walton Sporkin, Jr., all of Philadelphia, for appellants. Bernard Eskin and Wolf, Block, Schorr & Solis-Cohen of Philadelphia, for appellee.

VIRGINIA

Corporation, making shipments from another state to local dealers who sold to their own customers, ruled not doing business for purpose of service of process upon it.

Defendant unlicensed foreign corporation, which sought to have service upon it set aside, had its principal office and factories in New York. It had branch offices in nine states in which it was qualified to do business but no branch office in Virginia. In that state it owned no real or personal property and had no resident employees, warehouse, bank account, safe deposit box or telephone listing. There were sixteen business firms in Virginia, under contracts evidencing a vendor-vendee relationship with the defendant, who sold and distributed within a specified territory products manufactured by it. These dealers, not financed by defendant, purchased merchandise directly from the defendant by sending their orders to its home office for acceptance. There credit was passed upon and the merchandise delivered f.o.b. defendant's factory, Jamestown, New York, consigned to the dealers, whose property it became. Defendant had no control over the dealers. Service was made upon a district manager of defendant who resided in New

Jersey, had an office in Philadelphia and covered territory which included Virginia. He called upon the dealers at their request as a contact man operating between defendant and its dealers. Service was made upon him while attending a convention in Norfolk, Virginia at which products of various concerns, including the defendant, were displayed.

The Supreme Court of Appeals of Virginia affirmed a judgment of the trial court, the Circuit Court of the City of Norfolk, dismissing the suit for want of jurisdiction, finding the evidence to negative the inference that defendant was doing business.

Carnegie v. Art Metal Construction Company,* 60 S. E. 2d 17. Louis Lee Guy of Norfolk, for plaintiff in error. William H. Sands of Norfolk and Edward Paul Smith of Philadelphia, Pa., for defendant in error. Commerce Clearing House Court Decisions Requisition No. 435752.

* The full text of this opinion is printed in the **State Tax Reporter**, Virginia, page 351.

taxation

TENNESSEE

State Supreme Court upholds statutory formulas as applied to bases of franchise and excise taxes, rejecting use of accounting system treating Tennessee plant as a separate entity.

Complainant Illinois corporation sought to recover alleged overpayment of franchise and excise taxes. During the years in question, it had a factory at Chattanooga, Tennessee, a retail sales outlet there and at two other Tennessee cities. It also had factories in Illinois and New Jersey and sales outlets in 130 cities throughout the country. Its principal business office was in Illinois. The alleged overpayment arose from the treatment of complainant's business by the defendant Commissioner as a single unit or unitary business, to which the prescribed statutory formulas were applied by him in arriving at the taxes due, whereas complainant endeavored to treat its Tennessee plant and its other factories as separate entities. It also treated each of its 130 retail sales outlets in the same way, for accounting purposes. By complainant's system of accounting, enormous losses were shown on the manufacturing operation at Chattanooga, but the system failed to take into consideration the fact that the manufacturing losses were more than offset by retail sales profits.

The Tennessee Supreme Court affirmed a decree of the Chancellor dismissing complainant's suit, indicating that the statutory formulas were correctly applied by the Commissioner in the apportionment of the bases of the complainant's franchise and excise taxes, and rejecting the use of complainant's accounting system, which failed to offset manufacturing losses by retail sales profits.

*Crane Co. etc. v. Carson,** Tennessee Supreme Court, July 15, 1950. Tabor, Chambliss, Swafford & Claunch of Chattanooga, for complainant. W. F. Barry and Harry Phillips of Nashville, for the State. Commerce Clearing House Court Decisions Requisition No. 436897.

* The full text of this opinion is printed in the **State Tax Reporter**, Tennessee, page 730.

state legislation

Louisiana—Act No. 285 provides that incorporated municipalities are authorized to levy a 1% sales tax upon approval of the voters. This law will not go into effect if the constitutional amendment covered by H. B. 460, authorizing an additional state-wide 1% sales tax, is adopted.

Act No. 19 contains provision that the district and appellate courts of the state are empowered to recognize and adjudicate suits brought by other states and political subdivisions to enforce the payment of taxes due under the laws of the other governing bodies, provided, the courts of such other states are empowered to entertain and adjudicate suits in like manner.

Act No. 21 provides for service of process on the Secretary of State as agent for a foreign corporation which is "not one required by law to appoint an agent for service of process but has engaged in business activities in this State through acts performed by its employees or agents in this State."

Act No. 24 provides that the chain store tax is to relate to the stores in operation on January 1 of the preceding year, and requires the filing of a supplemental report and payment of the tax within forty days after the opening date of a new store or stores, a half-rate being applicable where a store is opened after June 30.

Act 444 amends the definition of capital stock, for franchise tax purposes to embrace "full shares, fractional shares, and any scrip certificates convertible into shares of stock."

Act 233 provides for the issuance of fractional shares.

New Jersey—Chapter 282 stipulates that, upon a change in the location of the principal office of a New Jersey corporation other than a bank or savings bank, a copy of the resolution authorizing the change, certified under the seal of the corporation and the hand of its principal executive officer or secretary, is to be filed, within ten days after any such change in location becomes effective, in the office in which the certificate of incorporation is filed.

Massachusetts—Chapter 608 brings about the imposition of the same rate on income of corporations for the year 1951 as in effect for the year 1950, namely, 5½%, plus 23% surtaxes.

Chapter 801 requires the annual reporting to the Commissioner of Corporations and Taxation of intangible property, unclaimed for fourteen years, and for its eventual surrender to the Commissioner.

appealed to the supreme court

*The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.**

ALABAMA. Docket No. 105. *Shippers Pre-Cooling Service v. Macks,* 181 F. 2d 510. (The Corporation Journal, October, 1950, page 188.) Foreign corporations—venue—interstate commerce—service on Secretary of State. **Petition for writ of certiorari filed, June 2, 1950. Certiorari denied, October 9, 1950.**

CALIFORNIA. Docket No. 152. *El Dorado Oil Works v. McColgan,* 215 P. 2d 4. (The Corporation Journal, May, 1950, page 152.) Corporate franchise tax—allocation factors used. **Appeal filed, June 26, 1950. October 9, 1950:** *"Per curiam:* The motion to dismiss is granted and the appeal is dismissed. *Butler Bros. v. McColgan,* 315 U. S. 501; *International Harvester Co. v. Evatt,* 329 U. S. 416."

CONNECTICUT. Docket No. 132. *Spector Motor Service, Inc. v. O'Connor,* 181 F. 2d 150. (The Corporation Journal, May, 1950, page 153.) State franchise tax liability—qualified interstate trucking corporation—interstate commerce. **Petition for writ of certiorari filed, June 15, 1950. Certiorari granted, October 9, 1950.**

GEORGIA. Docket No. 4. *Georgia Railroad & Banking Company v. Redwine,* United States District Court, Northern District of Georgia, July 29, 1949. (The Corporation Journal, February, 1950, page 92.) Property tax exemption—suit against state in Federal Court. **Appeal filed, November 12, 1949. Jurisdiction noted, December 5, 1949. February 20, 1950:** *"Per curiam:* Inasmuch as the Attorney General of Georgia stated at the bar of this Court that plain, speedy and efficient State remedies were available to appellant, the cause is ordered continued for such period as will enable appellant with all convenient speed to assert such remedies." (70 S. Ct. 472.)

ILLINOIS. Docket No. 133. *Norton Co. v. Department of Revenue,* 405 Ill. 314, 90 N. E. 2d 737. (The Corporation Journal, April, 1950, page 128.) State Retailer's Occupation (Sales) Tax—interstate shipments into Illinois. **Petition for writ of certiorari filed, June 15, 1950. Certiorari granted, October 9, 1950.**

MARYLAND. Docket No. 275. *Brown v. Eastern States Corporation et al.,* 181 F. 2d 26. (The Corporation Journal, October, 1950, page 184.) Standing of stockholder seeking relief under reorganization plan—removal of suit to Federal court. **Petition for writ of certiorari filed, August 28, 1950.**

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* Data compiled from **CCH U. S. Supreme Court Bulletin,** 1950-1951.

regulations and rulings

Arizona—Whether or not sales of paper cups, wrapping paper, twine, etc., to the retailer are taxable is primarily a question of fact. The sales of such items are non-taxable if the items actually accompany the product sold to the final buyer, if delivery of the product without such items would be impracticable and if the items are incidental to the sale of the contents, or where there is a separate charge made for the container, title to which passes to the consumer. However, where title is retained by the retailer and the containers are to be returned to him, sales of such containers to the retailer are taxable. Furthermore, sales of paper, napkins, paper plates, drinking straws and the like to the retailer are not taxable when these items are employed in the conduct of his business. (Opinion of the Attorney General to the Director of the Sales Tax Division, State Tax Reporter, Arizona, ¶ 7834.)

Kentucky—It is permissable for an out-of-state corporation engaged in the business of bottling soft drinks to acquire a trade-name to suit the particular drink so long as such name is not deceptively similar to the name of a corporation authorized to do business in this state. (Opinion of the Attorney General, State Tax Reporter, Kentucky, ¶ 002.)

Any person having a legitimate interest in any property held in custodial escheat by the state may inspect the records. (Ruling of Department of Revenue, State Tax Reporter, Kentucky, ¶ 34-472.)

Louisiana—A company maintaining an office in a city, where orders are taken and transmitted to a regional office for filing and the merchandise ordered therein returned to the original office, after which the customer calls and picks up his merchandise, is liable for municipal license tax in the city where the orders were taken and the merchandise delivered to the customer. (Opinion of the Attorney General, State Tax Reporter, Louisiana ¶ 30-023.)

Michigan—A sales tax licensee's sale of trade fixtures for consumption or use or for purposes other than resale as tangible personalty to another sales tax licensee is not subject to the sales tax act unless made in "ordinary course" of sellers business. (Opinion of the Attorney General to the Commissioner of Revenue, State Tax Reporter, Michigan, ¶ 60-015.)

North Carolina—Sales by a manufacutring plant to the ultimate consumer are retail sales and taxable at 3%. Only wholesale sales made at the plant are tax free. If, however, the wholesale sales are made from a store, or warehouse, they are subject to the wholesale rate of tax. (Opinion of the Attorney General to the Commissioner of Revenue, State Tax Reporter, North Carolina, ¶ 64-006.)

Vermont—The franchise tax is imposed for the calendar or fiscal year and accruals should be made on the basis of earinings during such a year. "Tax year" as defined in the statute has no bearing on accruals or computation of tax. In the first fractional year of operation, businesses are subject to tax on the net income shown during such fractional year, and the same rule applies during the last fractional year. In all cases the minimum tax applies for each year or fractional year. Consolidated returns are allowed by the department when such returns are made to the Federal Government. (Letter of Supervisor of Income and Franchise Taxes, State Tax Reporter, Vermont, ¶ 1539.)

some important matters

For November and December

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alaska—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

Delaware—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

District of Columbia—Annual Report due between January 1 and January 20.—Domestic Corporations.

Application for license in connection with District Franchise (Income) Tax due on or before January 1.—Domestic and Foreign Corporations.

Georgia—Annual License Tax Report and Tax due on or before January 1.—Domestic and Foreign Corporations.

Missouri—Annual Franchise Tax due on or before December 31.—Domestic and Foreign Corporations.

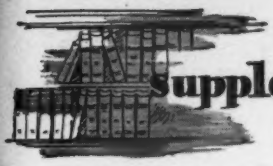
New Hampshire—Annual Maintenance Fee due on first business day of January.—Foreign Corporations.

New York—Second installment of Franchise (Income) Tax of Business Corporations due on or before November 15 (or within 30 days after notice, if given later than October 15; payable not later than January 15, in any event).—Domestic and Foreign Business Corporations other than real estate companies.

United States—Fourth installment of Income Tax imposed for the calendar year 1949 due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

Georgia Supreme Court affirms judgment of County Court in Dan River Mills case

The Georgia Supreme Court on October 9, 1950 affirmed the judgment of the Fulton County Superior Court of December 12, 1949, in *Redwine v. Dan River Mills, Inc.*, holding that the maintenance of a local office by a foreign corporation, soliciting orders sent to the home office in another state for acceptance or rejection, did not constitute "doing business," so as to require payment of the state income tax. The income tax law has, however, since been amended by H. B. 1033, (Act 717), Laws of 1950, with a view of offsetting the effect of the decision of the lower court, so as to reach income of corporations owning property or doing business in Georgia, regardless of whether qualified, maintaining a local office or whether taxable transactions are connected with interstate or foreign commerce.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Delaware Corporations (1949 Edition). Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of contractor getting lawyer's advice before undertaking construction work outside home state, even for federal government.

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More Sales with Spot Stocks. Advantages found by many manufacturers in carrying spot stocks at strategic shipping points—and preliminary statutory measures necessary to protect corporate status.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

When a Corporation Is P. W.O. L. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

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